

## NON DISCLOSURE AGREEMENT

**THIS NONDISCLOSURE AGREEMENT** (this “Agreement”), effective \_\_\_\_\_, 2009, is between \_\_\_\_\_, an entity providing broadband access in the State of Indiana (the “Provider”) and the Indiana Office of Technology (“IOT”) acting for and on behalf of the State of Indiana. The Provider and IOT, collectively, are referred to as the Parties.

**WHEREAS**, IOT has been designated as the single entity in Indiana eligible to receive a grant pursuant to §106(c) of the Broadband Data Improvement Act, 47 U.S.C. § 1303; Pub. L. No.110-385 (S. 1492) (2008) (“BDIA”);

**WHEREAS**, IOT has received a grant from the National Telecommunications and Information Administration (“NTIA”), pursuant to NTIA’s State Broadband Data and Development Program (“Program”) that effects the joint purposes of the American Recovery and Reinvestment Act and the BDIA by funding projects that collect comprehensive and accurate state-level broadband mapping data, develop state-level broadband maps, aid in the development and maintenance of a national broadband map, and fund statewide initiatives directed at broadband planning (“Grant”);

**WHEREAS**, the details of and guidelines for the Program are set forth in the NTIA’s Notice of Funds Availability (“NOFA”), Docket No. 0660-ZA29 (dated July 1, 2009; 74 FR 32545-65), including the NOFA’s Technical Appendix, the Notice of Clarification (dated August 7, 2009, 74 FR 40569-70), and the Notice of Clarification of Period of Performance (dated September 4, 2009; 74 FR 46573-74) (collectively the “Program Documents”);

**WHEREAS**, pursuant to the Grant, IOT is obligated to collect certain data from all facilities-based providers of broadband service in Indiana two times per year for an initial period of two years and use such data to carry out the provisions of the Grant and the Program Documents (“Broadband Data”);

**WHEREAS**, IOT has requested that the Provider provide Broadband Data, and will do so twice yearly for at least the initial period of two years as required by the Grant (“Data Requests”);

**WHEREAS**, the Program Documents set forth the obligation of IOT, as a Grant recipient, to maintain the confidentiality of certain Broadband Data collected from the Provider (“Confidential Information”);

**WHEREAS**, the Provider intends to provide IOT with the Broadband Data, so long as IOT protects the confidentiality of the Confidential Information;

**Now, therefore**, the Parties agree that the following terms and conditions shall govern the use of the Broadband Data the Provider provides to IOT in the context of the Grant and the Program:

**1. Use of Broadband Data.** IOT may use the Broadband Data provided by the Provider for any lawful use consistent with the requirements of the Grant and the Program, subject to the confidentiality restrictions contained therein and subject to the terms of this Agreement. The Provider retains all other rights, title, or interest in Broadband Data it provides IOT.

**2. Confidential Information.** As used in this Agreement, Confidential Information means any Broadband Data, including trade secrets, or commercial or financial information, the Provider provides to IOT that (a) identifies the type, technical specification, and/or location of infrastructure owned, leased, or used by the Provider and (b) any Broadband Data that provides street address level broadband availability and/or subscribership information, unless such Broadband Data is obtained by IOT as non confidential information under paragraph 3, below.

**3. Non Confidential Information.** Notwithstanding the foregoing paragraph, Broadband Data the Provider provides IOT shall not be considered Confidential Information if it:

A. was already known to IOT free of any obligation to keep it confidential at the time of its disclosure by the Provider, as evidenced by written records prepared prior to such disclosure; or,

B. is or becomes publicly known through no unlawful act of IOT or a third party; or, is rightfully received from a third person having no direct or indirect secrecy or confidentiality obligation with respect to such data; or,

C. is independently developed by an employee, agent or contractor of IOT, not associated with the Grant or the Program and who did not have any direct or indirect access to Provider Confidential Information; or,

D. is disclosed to a third person by the Provider without similar restrictions on such third person's rights; or,

E. is approved for release by the Provider's written authorization.

**4. Designation of Confidential Information.** The Provider shall clearly mark or otherwise identify as "Confidential Information" Broadband Data covered by paragraph 2, above, at the time such Broadband Data is submitted to IOT. If IOT disagrees with the identification of any Broadband Data as Confidential Information, IOT shall notify the Provider that IOT does not consider such Broadband Data to be Confidential Information. IOT shall nonetheless treat such Broadband Data as Confidential Information until the Parties reach agreement on whether the Broadband Data at issue should be considered Confidential Information.

**5. Protection of Confidential Information by IOT Employees or Agents.** IOT shall inform all persons and entities of the confidentiality and nondisclosure requirements of this Agreement prior to disclosure of any Confidential Information to them, and shall secure written agreement of all such persons or entities to comply with its provisions prior to disclosure of the Broadband Data to them. IOT may disclose Broadband Data received from the Provider, including Confidential Information, to IOT employees, agents, and consultants who have a bona fide need to receive the Broadband Data in order to perform work pursuant to the Grant and the Program.

**6. Disclosure of Service Area.** IOT may identify the Provider's "service area" and/or "footprint," as those terms are defined in the Program Documents, including without limitation the maximum advertised and/or typical speeds of the Provider's broadband service in such footprint or service area, on any maps or other documents containing Broadband Data that are made publicly available. Any publicly available maps or interactive websites displaying broadband coverage using Broadband Data the Provider provides to IOT will be portrayed in a comparable manner as other participating providers of the same platform (e.g. wireline or wireless) in a given area.

**7. Disclosure of Confidential Information to NTIA and the FCC.** IOT may provide any and all Broadband Data, including without limitation any and all Confidential Information, to the NTIA and the Federal Communications Commission ("FCC"). IOT shall not be responsible for the NTIA's or FCC's use of such Broadband Data. In the absence of a mutual agreement to the contrary, and to the extent the Provider gives IOT address-specific Broadband Data, (a) IOT will not provide that address-specific Broadband Data to the NTIA or the FCC, and (b) any information derived from such address-specific Broadband Data that IOT provides to the NTIA or the FCC will be provided in the alternative aggregated

census block format described in the Technical Appendix Clarification published August 12, 2009 (74 C.F.R. 50469).

**8. Indiana Access to Public Records Act.** The Parties agree that the Confidential Information described in paragraph 2, above, is exempt from public disclosure under the Indiana Access to Public Records Act, Ind. Code § 5-14-3 ("APRA"). Confidential Information will not be disclosed to third parties or otherwise made publicly available, pursuant to the limitations set forth in the BDIA, except as set forth in this Agreement or required by applicable law or judicial or administrative action or proceeding, or as may be required by further actions of NTIA or the FCC.

**9. Requests for Access under APRA.** If IOT receives a request under APRA for Confidential Information, IOT shall not disclose the Confidential Information, and shall defend any and all suits seeking to compel disclosure under APRA. If IOT receives a judicial or administrative subpoena which seeks the disclosure of Confidential Information for a purpose not related to this Agreement, IOT shall provide prompt written notice to the Provider in order to permit the Provider the opportunity to seek a protective order or other appropriate relief. If IOT is ultimately required by law, regulation, or court order to disclose any Confidential Information provided by the Provider, IOT shall provide prompt written notice of such requirement or court order to the Provider prior to disclosure.

**10. No Waiver.** Nothing in this Agreement shall constitute a waiver of any legal rights and remedies the Parties may have in law or in equity.

**11. Duration of Agreement.** This Agreement shall govern any and all Broadband Data, including Confidential Information, the Provider gives IOT in connection with the Grant and the Program, as may be extended from time to time. The duties described in this Agreement shall continue as long as IOT holds the Confidential Information.

**12. Entire Agreement.** This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof and supersedes any and all prior discussions and agreements, written or oral, regarding the treatment of Broadband Data the Provider provides IOT.

**13. Amendments.** This Agreement may only be changed or supplemented by a written amendment signed by authorized representatives of the Parties.

**14. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana, irrespective of its choice of law principles, and suit, if any, shall be brought in a court of competent jurisdiction in Marion County, Indiana.

**In Witness Whereof,** Provider and IOT have, through their duly authorized representatives, entered into this Nondisclosure Agreement. The parties, having read and understood the foregoing terms of this Agreement, do by their respective signatures dated below hereby agree to its terms.

**(Provider)**

**Indiana Office of Technology**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
James I. Sparks  
State Geographic Information Officer  
Date: \_\_\_\_\_